

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
beIN SPORTS, LLC,	)	
<i>Complainant,</i>	)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
	)	
COMCAST CABLE	)	
COMMUNICATIONS, LLC	)	
And	)	
COMCAST CORPORATION,	)	
<i>Defendants.</i>	)	
	)	

**MOTION TO STRIKE THIRD COMPLAINT**

1. Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) respectfully request that the Commission strike the third program carriage complaint filed by beIN Sports, LLC (“beIN”) on February 5, 2019 (the “Third Complaint”). Allowing beIN’s Third Complaint to proceed – one presenting substantially *the same arguments and evidence* as well as seeking the *same remedies* as a separate, pending program carriage complaint – would contravene the Commission’s Part 76 pleading rules and undermine its goal of ensuring expeditious resolution of program carriage disputes. It would also be unfair and prejudicial to Comcast. By beIN’s own admission, the Third Complaint was filed as part of a deliberate claim-splitting strategy; moreover, it was filed less than a week before Comcast was required to file its Answer to beIN’s December 13, 2018 Complaint (the “Second Complaint”). The Commission should reject this abuse of process by disallowing the Third Complaint.

2. beIN’s Second Complaint against Comcast alleges that Comcast engaged in affiliation-based discrimination. beIN’s Third Complaint repeats the allegation of discrimination

on the basis of affiliation, with an additional theory that Comcast unreasonably refused to deal with beIN in October and November of 2018 – all well before beIN chose to file its Second Complaint. Indeed, beIN’s Third Complaint is identical in large part to its Second Complaint, and requests the *exact same* substantive remedies.<sup>1</sup> beIN has no excuse for failing to include this claim as part of the Second Complaint and has waived its right to seek relief based on it.<sup>2</sup>

3. As proof of this point, in correspondence with Comcast regarding beIN’s desire to amend its Second Complaint or file an additional one, beIN admitted that it intentionally omitted this “refusal to deal” claim from its Second Complaint for its own *strategic* reasons. Specifically, beIN did not want to “complicat[e] the refiling [of its dismissed First Complaint] with an additional cause of action,” and also asserted that including this claim in the Second Complaint would have been “counterproductive” to further negotiations between the parties (even though the parties’ respective positions had not changed in months).<sup>3</sup> beIN further asserted that it “was under no obligation to incorporate” this known claim in its Second Complaint, and could freely amend that pleading to include the claim at any time of beIN’s choosing.<sup>4</sup>

4. These kind of procedural tactics are not permitted under the Commission’s

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<sup>1</sup> Compare Second Complaint at 68 (prayer for relief), with Third Complaint at 59 (prayer for relief).

<sup>2</sup> Notably, the morning after filing its Second Complaint, beIN issued a press release stating that “Comcast has . . . refused to negotiate with us,” and the title of that release includes an alleged “Refusal to Negotiate.” See Press Release, beIN Sports, beIN Sports Refiles Carriage Complaint against Comcast; Sports Network Sheds New Light on Comcast’s Discriminatory Practices and Refusal to Negotiate in Updated FCC Complaint (Dec. 14, 2018), <https://www.businesswire.com/news/home/20181214005197/en/beIN-SPORTS-Refiles-Carriage-Complaint-Comcast>.

<sup>3</sup> Letter from Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN, to Francis Buono et al., Comcast (Jan. 10, 2019) (“beIN Jan. 10 Notice”) (attached to Third Complaint as Ex. 19); see also Third Complaint ¶ 25. Initially, beIN provided *no* explanation to Comcast for this intentional omission when it first notified Comcast that it intended to amend its Second Complaint without the Commission’s authorization or Comcast’s consent. See Letter from Pantelis Michalopoulos, Counsel for beIN, to Francis Buono et al., Comcast (Dec. 24, 2018) (attached to Third Complaint as Ex. 17).

<sup>4</sup> beIN Jan. 10 Notice at 2.

program carriage rules. Part 76 expressly requires that “[a]ll matters concerning a *claim*, defense or *requested remedy*, should be *pleaded fully* and with specificity.”<sup>5</sup> To the extent the parties’ discussions in October and November of 2018 were relevant to beIN’s claim of discrimination and requested program carriage remedies, beIN had an obligation to plead those matters *fully* when it chose to file its Second Complaint in December 2018.<sup>6</sup> The Commission’s rules further state that additional pleadings “by any party will not be accepted” absent “a showing of extraordinary circumstances.”<sup>7</sup> Taken together, these mandates make clear that a program carriage complainant is not permitted to split its claims into two, tactically-staggered complaints.<sup>8</sup>

5. Nor can beIN possibly excuse its failure to comply with the Commission’s pleading requirements. In the parties’ pre-filing correspondence, Comcast specifically pointed out the relevant pleading rules to beIN, including beIN’s obligation to obtain the Commission’s *prior* authorization for any additional pleadings.<sup>9</sup> Rather than take Comcast up on its reasonable

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<sup>5</sup> 47 C.F.R. § 76.6(a)(1) (emphasis added); *see also id.* § 76.7(a)(4) (specifying that a “complaint shall state *fully and precisely all pertinent facts and considerations* relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest”) (emphasis added).

<sup>6</sup> beIN filed the Second Complaint on December 13, 2018, within a few hours of receiving Comcast’s response to beIN’s December 3, 2018 pre-filing notice. beIN apparently chose this filing date to ensure that the Second Complaint would fall within the program carriage rules’ one-year limitations period running from Comcast’s December 13, 2017 offer, so that beIN could continue to assert (mistakenly) a claim under the expired Comcast-NBCUniversal Conditions as well as the program carriage rules.

<sup>7</sup> 47 C.F.R. § 76.7(d).

<sup>8</sup> *See id.*; *see also, e.g., Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd. 2642 ¶ 23 (1993) (“Given the [program carriage] statute’s explicit direction to the Commission to handle program carriage complaints expeditiously, additional pleadings *will not be accepted or entertained* unless specifically requested by the reviewing staff.”) (emphasis added).

<sup>9</sup> *See* Letter from Francis M. Buono, SVP, Legal Regulatory Affairs & Senior Deputy General Counsel, Comcast Corporation, to Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN (Jan. 3, 2019) (attached to Third Complaint as Ex. 18); Letter from Francis M. Buono, SVP, Legal Regulatory Affairs & Senior Deputy General Counsel, Comcast Corporation, to Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN (Jan. 18, 2019) (attached to Third Complaint as Ex. 20).

proposal to jointly seek the Commission’s guidance as to whether beIN could *amend* the Second Complaint, beIN instead unilaterally filed the Third Complaint just as Comcast was finalizing its Answer to the Second Complaint.<sup>10</sup> Even then, beIN made no attempt to obtain the Commission’s approval for the filing, and the Third Complaint makes only the barest of assertions to explain beIN’s actions, not even *claiming* (much less demonstrating) the “extraordinary circumstances” required by the Commission’s rules (nor could it).<sup>11</sup>

6. The Commission should not condone such deliberate gamesmanship and abuse of process.<sup>12</sup> The program carriage rules and Part 76 pleading requirements were designed to expedite these cases, not to indulge complainants who engage in such disruptive tactics with the apparent view that it is better to ask forgiveness than permission for flouting the rules. beIN has violated the Part 76 pleading rules and has not made, and given its own admissions cannot make, the requisite showing of extraordinary circumstances. Based on these circumstances, therefore, beIN has waived this new claim by failing to include it in the Second Complaint and cannot seek any relief based on it. The Commission should strike the Third Complaint.

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<sup>10</sup> beIN’s claim that, prior to filing the Third Complaint, it made an offer to Comcast for the parties to jointly request a status conference with Commission staff is inaccurate. *See* Third Complaint ¶ 27. Rather, on January 31, 2019, counsel for beIN orally reiterated its request that Comcast agree to file a consolidated Answer to beIN’s Second and Third Complaints 60 days after beIN filed the Third Complaint. When pressed, counsel for beIN provided no explanation as to why beIN instead did not seek leave of the Commission to file its Third Complaint, or jointly submit the parties’ correspondence for consideration by Commission staff, as Comcast had suggested.

<sup>11</sup> *See id.* ¶¶ 25-28.

<sup>12</sup> *See* 47 C.F.R. § 76.6(a)(4) (submissions shall “not [be] interposed for any improper purpose” and permitting the Commission to impose sanctions for violations of this provision); *cf. id.* § 76.6(c) (stating that an abuse of process may be subject to appropriate sanctions).

Respectfully submitted,

/s/ Michael D. Hurwitz

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February 15, 2019

*Attorneys for Comcast Corporation and Comcast  
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### **VERIFICATION OF MICHAEL D. HURWITZ**

I, Michael D. Hurwitz, have read Comcast's Motion To Strike beIN's Third Complaint and to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and it is not interposed for any improper purpose.

Dated: Washington, DC  
February 15, 2019



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Michael D. Hurwitz  
*Counsel for Comcast Corporation and  
Comcast Cable Communications, LLC*

## CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 15th day of February 2019, I caused a true and correct copy of the foregoing Motion to Strike to be served by overnight and electronic mail on the following:

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Samuel Eckland

February 15, 2019